



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 29 सितम्बर, 2018/07 आश्विन, 1940

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Dharamshala, the 25<sup>th</sup> April, 2018*

**No. Shram (A) 6-2/2014 (Awards).**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	748/16	Jagdish Chand	Er.-in-Chief HPPWD & others	26-02-2018
2.	745/16	Anil Kumar	Er.-in-Chief HPPWD & others	26-02-2018
3.	741/16	Ramesh Chand	Er.-in-Chief HPPWD & others	26-02-2018
4.	642/16	Satya Devi	Er.-in-Chief HPPWD & others	26-02-2018
5.	734/16	Leela Devi	Er.-in-Chief HPPWD & others	26-02-2018
6.	793/16	Guddi Devi	Er.-in-Chief HPPWD & others	26-02-2018
7.	680/16	Ramesh Kumar	Er.-in-Chief HPPWD & others	26-02-2018
8.	742/16	Vichiter Singh	Er.-in-Chief HPPWD & others	26-02-2018
9.	737/16	Promila Devi	Er.-in-Chief HPPWD & others	26-02-2018
10.	736/16	Guddi Devi	Er.-in-Chief HPPWD & others	26-02-2018
11.	210/16	Sanjay Kumar	Er.-in-Chief HPPWD & others	26-02-2018
12.	424/16	Pyar Chand	E.E. H.P.S.E.B. Baijnath	28-02-2018
13.	497/16	Nanak Chand	E.E. H.P.S.E.B. Baijnath	28-02-2018
14.	42/17	Madan Lal	E.E. H.P.S.E.B. Baijnath	28-02-2018

By order,

NISHA SINGH IAS,  
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 748/2016

Date of Institution : 18-11-2016

Date of Decision : 26-02-2018

Shri Jagdish Chand s/o Shri Surjan Ram, r/o Village Tarola, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla- 2

2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P

..*Respondents*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Jagdish Chand s/o Shri Surjan Ram, r/o Village Tarola, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. during 08/1999 by (i) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2, (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 16 years, without complying with the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 12/1998 to 08/1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of December, 1998 where he continued to work upto August, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 8-7-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 12/1998 who intermittently worked upto 7/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged

that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 2.8.2017 for determination:

- (1) Whether termination of the services of petitioner by the respondent during August, 1999 is/was illegal and unjustified as alleged? ...*OPP*.
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ... *OPR*.
- (4) Whether the claim petition suffers from vice of delay and laches as alleged? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed
Relief :	Petition is partly allowed awarding lump sum compensation of Rs.25,000/- per operative part of award.

REASONS FOR FINDINGS

#### ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of August, 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* November, 1998 on muster roll basis as beldar who continued to work till August, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 18 days in the year 1998 and 178 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 178 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since December, 1998 till July, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in

service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after July, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 8-7-2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial

dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of July, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to

decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 45 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 178 days in the year 1999 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.



23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 745/2016  
Date of Institution : 18-11-2016  
Date of Decision : 26-02-2018

Shri Anil Kumar s/o Shri Katku Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. *..Petitioner.*

*Versus*

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *..Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Anil Kumar s/o Shri Katku Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. during 2002 by (i) the Engineering-in-Chief HPPWD, Nirman Bhawan, Shimla-2, (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 13 years, without complying with the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 1999 to 2002 and delay of more than 13

years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1999 where he continued to work upto 2002 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2002 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 4-7-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto 12/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 2-8-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondent during 2002 is/was illegal and unjustified as alleged? *OPP.*
- (2) If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? *OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *OPR.*
- (4) Whether the claim petition suffers from vice of delay and laches as alleged? *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 :	Yes
Issue No.2 :	Discussed
Issue No.3 :	No
Issue No.4 :	Discussed
Relief :	Petition is partly allowed awarding lump sum compensation of Rs.15,000/- per operative part of award.

#### REASONS FOR FINDINGS

#### ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the 2002 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1999 on muster roll basis as beldar who continued to work till December, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked only for two months *i.e.* November & December, 1999 whereas the claimant/petitioner alleges that he had worked from 1999 to 2000. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of November, 1999 till December, 1999 and not upto 2002. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 59 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 59 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since in the year 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been

violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after December, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 4-7-2015 after about 13 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in Geetam Singh's case 2013 (136) FLR 893 (SC) has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of December, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehement contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been

made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments 4more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two months** who was non-skilled worker ageing 33 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 59 days in the year 1999 irrespective of fact that demand notice was issued after a period of 13 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.15,000/- (Rupees fifteen thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 741/2016  
Date of Institution : 18-11-2016  
Date of Decision : 26-02-2018

Shri Ramesh Chand s/o Shri Lalman, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *..Petitioner.*

*Versus*

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. *..Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Ramesh Chand s/o Shri Lalman, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 07-04-1999 by the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2, (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial disputes after more than 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 10-11-1998 to 06-04-1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”



2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November, 1998 where he continued to work upto 6-4-1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 4-3-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 10/1998 who intermittently worked upto 4/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 2-8-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 7-4-1999 is/was illegal and unjustified as alleged? *OPP.*
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? *OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *OPR.*
- (4) Whether the claim petition suffers from vice of delay and laches as alleged? *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed
Relief :	Petition is partly allowed awarding lump sum compensation of Rs .25,000/- per operative part of award.

#### REASONS FOR FINDINGS

#### ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of April, 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* October, 1998 on muster roll basis as beldar who continued to work till April, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 56 days in the year 1998 and 99 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 99 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since October, 1998 till April, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after April, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25 H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after April, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 4-3-2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment

relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of April, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10

of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 38 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 99 days in the year 1999 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 642/2016  
Date of Institution : 09-9-2016  
Date of Decision : 26-02-2018

Smt. Satya Devi w/o Shri Krishan Chand, r/o Village Bhar, P.O. Kot, Tehsil Sarkaghat,  
District Mandi, H.P. ..Petitioner.

*Versus*

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. ..Respondents.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Satya Devi w/o Sh. Krishan Chand Vill. Bhar, PO Kot, Tehsil Sarkaghat, Distt. Mandi, H.P. during 3/2000 by (1) The Engineer in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis *w.e.f* 1-3-1999 to 3/2000, only for 275.5 days, and has raised her industrial dispute *vide* demand notice dated 5-2-2015 after 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* March, 1999 where she continued to work upto March, 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent *vide* verbal order *w.e.f.* March, 2000 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 19-12-2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no. 8315/2012 which had been decided on 20-12-2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* March, 2000 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wagger on 3/1999 who intermittently worked upto 3/2000. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleged that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13-11-2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.



7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 02-8-2017 for determination:—

- (1) Whether termination of the services of the petitioner by the respondents during March, 2000 is/was improper and unjustified as alleged? *OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *OPR.*
- (4) Whether the claim petition suffers from vice of delay and laches as alleged? *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed
Relief :	Petition is partly allowed awarding lump sum compensation of Rs. 30,000/- per operative part of award.

#### REASONS FOR FINDINGS

#### ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* March, 2000 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of August, 1998 on muster roll basis as beldar who continued to work till June, 2001 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex.

RW1/B on record reveals that petitioner had worked for 214 ½ days in the year 1999 and 61 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding her termination in March, 2000, petitioner has factually worked for 214 ½ days in 1999 and 61 days in 2000 aggregating to 275 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since March, 1999 till March, 2000 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondents in doing so clearly violates Sections 25-F and 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 2000. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after March, 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 5-2-2015 after about fifteen

years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on March, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-**

cum-Processing Society Limited and Another (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 53 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 275 ½ days in two years when she had

already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of fifteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 734/2016  
Date of Institution : 18-11-2016  
Date of Decision : 26-02-2018

Smt. Leela Devi w/o Shri Thakur Dass, r/o Village Sakrain, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. ..Petitioner.

*Versus*

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. ..Respondents.

### Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Leela Devi w/o Shri Thakur Dass, r/o Village Sakrain, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. during 2001 by (i) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2, (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised her industrial disputes after more than 14 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 1998 to 2001 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* August, 1998 where she continued to work upto June, 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent *vide* verbal order *w.e.f.* June, 2001 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 9-2-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not

resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no. 8315/2012 which had been decided on 20-12-2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* June, 2001 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 7/1998 who intermittently worked upto 6/2001. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleged that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13-11-2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 02-8-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondents during year 2001 is/was improper and unjustified as alleged? OPP.
- (2) If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? DPR.
- (4) Whether the claim petition suffers from the vice of delay and laches as alleged? OPR

## Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	No
Relief :	Petition is partly allowed awarding lump sum compensation of Rs.40,000/- per operative part of award.

## REASONS FOR FINDINGS

## ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* June, 2001 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of August, 1998 on muster roll basis as beldar who continued to work till June, 2001 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shashi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 76 days in the year 1998, 242 days in 1999, 197 days in 2000 and 117 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding her termination in June, 2001, petitioner has factually worked for 197 days in 2000 and 117 days in 2001 aggregating to 314 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since August, 1998 till June, 2001 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondents in doing so clearly violates Sections 25-F and 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or



letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 2001. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after June, 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 9-2-2015 after about fourteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur**

**& Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs. 1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on June, 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be

relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **four years** who was non-skilled worker ageing 47 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 314 days in two years when she had already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of fifteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

## RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA)  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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## IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 793/2016  
Date of Institution : 19-11-2016  
Date of Decision : 26-02-2018

Smt. Guddi Devi w/o Shri Anup Chand, r/o V.P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. ..Petitioner.

*Versus*

1. The Engineer-in-Chief, H.P.P.W.D., Nirman Bhawan, Shimla-2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. ..Respondents.

## Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

## AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Guddi Devi w/o Shri Anup Chand, V.P.O. Tanehar, Sarkaghat, District Mandi, H.P. during 09-1999 by (1) the Engineer-in-Chief H.P.P.W.D., Nirman Bhawan, Shimla, and (2) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who had worked as beldar on daily wages basis during 01-1999 to 11-1999, only for 218 days, and has raised her industrial dispute *vide* demand notice dated 11-05-2015 after more than 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of January, 1999 where she continued to work upto September, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999) and Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (1-1-2000) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Pradeep Kumar on 2-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008, Subhash Chand on 12-9-2008, Ramesh Kumar on 27-9-2012 and Ruma Devi on 20-5-2014 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 19-12-2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year September, 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 6/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-10-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondents during Sept., 1999 is/was illegal and unjustified as alleged? *OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *OPR.*
- (4) Whether claim petition suffers from the vice of delay and laches as alleged? *OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed
Relief :	Petition is partly allowed awarding lump sum compensation of Rs. 20,000/- per operative part of award.

## REASONS FOR FINDINGS

**ISSUES NO. 1, 2 AND 4**

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of January, 1999 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from January, 1999 to June, 1999 whereas the claimant/petitioner alleges that he had worked from January, 1999 to September, 1999. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of January, 1999 till June, 1999 and not upto September, 1999. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (1-1-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 132 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 132 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4.7.1999),

Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in July, 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after June, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in any type of job and cross-examination of PW1 reveals that she had not been engaged in cultivation of her land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has



prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on June, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material

before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 52 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 132 days in a year irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

### ISSUE NO .3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the

back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 680/2016  
Date of Institution : 03-10-2016  
Date of Decision : 26-02-2018

Shri Ramesh Kumar s/o Shri Sunder Singh, r/o Village Kharol, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. ..Petitioner.

*Versus*

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. ..Respondents.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Ramesh Kumar s/o Sh. Sunder Singh, Vill. Kharol, PO Sidhpur, Tehsil Sarkaghat, Distt. Mandi, H.P. during 2/2004 by (1) The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) The Executive Engineer, HPPWD, Division, Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 11/1999 to 2/2004, only for 1122 days, and has raised his industrial dispute *vide* demand notice dated 24-1-2015 after 13 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* November, 1999 where he continued to work upto February, 2004 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2004 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shashi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 24-1-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2004 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wagger on 11/1999 who intermittently worked upto February, 2004. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and

therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-10-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondents during Feb., 2004 is/was illegal and unjustified as alleged? *OPP.*
  - (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? *OPP.*
  - (3) Whether the claim petition is not maintainable in the present form as alleged? *OPR.*
  - (4) Whether the claim petition suffers from vice of delay and laches as alleged? *OPR.*
- Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.80,000/- per operative part of award.

#### REASONS FOR FINDINGS

#### ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the 2004 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1999 on muster roll basis as beldar who continued to work till February, 2004 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 48 days in the year 1999, 240 ½ days in 2000, 297 days in 2001, 265 days in 2002, 252 days in 2003 and 19 days in 2004. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2004, petitioner has factually worked for 19 days in 2004 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since in the year 2004 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after February, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in

service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after February, 2004 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 24-1-2015 after about 13 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial

dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of February, 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a



reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **06 years** who was non-skilled worker ageing 40 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 19 days in the year 2004 irrespective of fact that demand notice was issued after a period of 13 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs. 80,000/- (Rupees eighty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the

date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 742/2016  
Date of Institution : 18-11-2016  
Date of Decision : 26-02-2018

Shri Vichiter Singh s/o Shri Bhag Mal, r/o Village Haryanal, P.O. Tanehar, Tehsi Sarkaghat,  
District Mandi, H.P. ..Petitioner.

*Versus*

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. ..Respondents.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Vichiter Singh s/o Shri Bhag Mal, r/o Village Haryanal, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. during 1999 by (i) The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2, (ii) The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial disputes after more than 16 years, without

complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 1998 to 1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1998 where he continued to work upto 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 4-3-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 8/1999 who intermittently worked upto 8/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim

when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-10-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondents during 1999 is/was illegal and unjustified as alleged? *OPP.*
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? *OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *OPR.*
- (4) Whether the claim petition suffers from the vice of delay and laches as alleged? *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed
Relief :	Petition is partly allowed awarding lump sum compensation of Rs. 15,000/- per operative part of award.

#### REASONS FOR FINDINGS

#### ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be

regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1998 on muster roll basis as beldar who continued to work till the year, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked only for one month *i.e.* August, 1999 whereas the claimant/petitioner alleges that he had worked from 1998 to 1999. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month August, 1999 and not in 1998. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 30 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 30 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since in the year 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004

whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after August, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 4-3-2015 after about 13 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length

of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of August, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very

jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Dispute Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **one month** who was non-skilled worker ageing 38 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 30 days in the year 1999 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.15,000/- (Rupees fifteen thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

### ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which



the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 737/2016  
Date of Institution : 18-11-2016  
Date of Decision : 26-02-2018

Smt. Promila Devi w/o Shri Achhar Singh, r/o Village & P.O. Samour, Tehsil Sarkaghat, District Mandi, H.P. ....*Petitioner.*

*Versus*

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. ....*Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947.**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Promila Devi w/o Sh. Achhar Singh Vill. & PO Samour, Tehsil Sarkaghat, Distt. Mandi, H.P. during 5/2000 by (1) the Engineer-in- Chief HPPWD, Nirman Bhawan, Shimla, and (2) the Executive

Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 11/1998 to 1/1999 and 1/2000 to 5/2000, only for 193 days, and has raised her industrial dispute *vide* demand notice dated 26.12.2015 after more than 14 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* November, 1998 where she continued to work upto May, 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent *vide* verbal order *w.e.f.* May, 2000 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 26-12-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20-12-2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* May, 2000 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wagger on 11/1998 who intermittently worked upto 5/2000. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner

by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13-11-2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.10.2017 for determination:—

1. Whether termination of the services of petitioner by the respondents during May, 2000 is/was improper and unjustified as alleged? *OPP.*

11. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP.*

12. Whether the claim petition is not maintainable in the present form as alleged? *OPR.*

13. Whether the claim petition suffers from the *vice* of delay and laches as alleged? *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 :	Yes
Issue No.2 :	Discussed
Issue No.3 :	No
Issue No.4 :	No
Relief. :	Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

## REASONS FOR FINDINGS

### ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* May, 2000 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till May, 2000 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 42 days in the year 1998, 284 days in 1999 and 120 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding her termination in May, 2000, petitioner has factually worked for 284 days in 1999 and 120 days in 2000 aggregating to 404 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since November, 1998 till May, 2000 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondents in doing so clearly violates Sections 25-F and 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after May, 2000. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in

service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after May, 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 26-12-2015 after about fifteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/Counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past

30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on May, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of

dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **three years** who was non-skilled worker ageing 50 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 404 days in two years when she had already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of fifteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lumpsum compensation of Rs.35,000/- (Rupees thirty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 736/2016  
Date of Institution : 18-11-2016  
Date of Decision : 26-02-2018

Smt. Guddi Devi w/o Shri Bhag Mal, r/o Village Sakrain, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. *..Petitioner.*

*Versus*

7. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla (2)  
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *..Respondents.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services Smt. Guddi Devi w/o Shri Bhag Mal, r/o Village Sakrain, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. during 2000 by (i) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2 (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised her industrial disputes after more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 1998 to 2000 and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”



2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1998 where she continued to work upto 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shashi Pal (6-4-1999) and Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (1-1-2000) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Pradeep Kumar on 2-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008, Subhash Chand on 12-9-2008, Ramesh Kumar on 27-9-2012 and Ruma Devi on 20-5-2014 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 9-2-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 8/1998 who intermittently worked upto 12/1998. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Authorized Representative/counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-10-2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondents during 2000 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether claim petition suffers from the vice of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed
Relief :	Petition is partly allowed awarding lump sum compensation of Rs. 25,000/- per operative part of award.

#### REASONS FOR FINDINGS

#### ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 2000 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1998 on muster roll basis as beldar who continued to work till 2000 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 to 1999 whereas the claimant/petitioner alleges that he had worked from 1998 to 2000. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the month of August, 1998 till July, 1999 and not upto 2000. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (1-1-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 119 days in the year 1998 and 92 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 92 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in July, 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after July, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in any type of job and cross-examination of PW1 reveals that she had not been engaged in cultivation of her land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case

rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on July, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act.

In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 45 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 211 days in two years irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.25,000/- (Rupees twenty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 210/2016  
Date of Institution : 11-4-2016  
Date of Decision : 26-02-2018

Shri Sanjay Kumar s/o Shri Achharu Ram, r/o Village Hukkal, P.O. Longani, Tehsil Sarkaghat, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *..Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Sanjay Kumar s/o Shri Achharu Ram, r/o Village Hukkal, P.O. Longani, Tehsil, Sarkaghat, District Mandi, H.P. *w.e.f.* 09-02-2004 by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after 6 years *vide* demand notice dated 19-02-2010, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of June, 1999 where he

continued to work upto 8-2-2004 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2004 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1-8-1998), Shashi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Ajay Kumar on 1-12-2003, Lekh Raj on 11/2004, and Satya Devi on 27-1-2011 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 22-1-2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 36/2016 which had been decided on 7-1-2016 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 6/1999 who intermittently worked upto February, 2004. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C, copy of notice dated 30-1-2004 Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.



7. I have heard the Ld. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 28.8.2017 for determination:—

- (1) Whether termination of the services of petitioner by the respondent during 9.2.2004 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition suffers from vice of delay and laches as alleged? .. *OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 :	Yes
Issue No.2 :	Discussed
Issue No.3 :	No
Issue No.4 :	Discussed
Relief. :	Petition is partly allowed awarding lump sum compensation of Rs. 175,000/- per operative part of award.

### REASONS FOR FINDINGS

#### ISSUES NO. 1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of February, 2004 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* June, 1999 on muster roll basis as beldar who continued to work till February, 2004 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not

followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 221 days in the year 1999, 347 days in 2000, 355 days in 2001, 342 days in 2002, 353½ days in 2003 and 36 days in 2004. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2004, petitioner has factually worked for 353 ½ days in 2003 and 36 days in 2004 aggregating to 386 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days immediately prior to his retrenchment as stated above. Be it noticed that Ajay Kumar, Lekh Raj & Satya Devi had been appointed in 2003, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after February, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shashi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) were engaged between 1998 to 2003. In 2004, one Ajay Kumar s/o Hari Chand was appointed on 1-12-2003, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of "Last come First go" was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in February, 2004 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Ajay Kumar, Lekh Raj & Satya Devi had been appointed in 2003, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after February, 2004 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 19.2.2010 after about 6 years and

thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Coordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that

termination of petitioner in this case took place in the month of June, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondent has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether

different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **six years** who was non-skilled worker ageing 42 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 386 ½ days in the years 2003 and 2004 respectively irrespective of fact that demand notice was issued after a period of 6 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs. 1,75,000/- (Rupees one lakh seventy five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

### ISSUE NO. 3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

### RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 26th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 424/2016  
Date of Institution : 27-06-2016  
Date of Decision : 28-02-2018

Shri Piar Chand s/o Shri Prakash Chand, r/o Village Keori, P.O. Bir, Tehsil Baijnath,  
District Kangra, H.P. ..Petitioner.

*Versus*

The Executive Engineer, Electrical Division, HPSEB Ltd. Baijnath, District Kangra, H.P.  
..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. Pradeep Dogra, Adv.  
For the Respondent : Sh. Kapil Singh Mandyal, Adv.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Piar Chand o/o Shri Prakash Chand r/o Village Keori, P.O. Bir, Tehsil Baijnath, District Kangra, H.P. *w.e.f.* 31-12-2001 by the Executive Engineer, Electrical Division, HPSEB Limited, Baijnath, District Kangra, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 11 years *vide* demand notice dated 25-06-2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that claimant/petitioner was appointed as daily paid worker in July, 1998 at Electrical Division Baijnath where he worked upto 30-5-2001 on muster roll however, service of petitioner is alleged to be illegally terminated by the respondent in the year June, 2001 without any rhyme and reason with object to victimize the petitioner on the pretext that works and funds were not available with the respondent. It is further alleged that the respondent had appointed junior to the petitioner namely Gian Chand s/o Atma Ram etc. who were allowed to continue in service however they were still working with the respondent/department. It is alleged that service of petitioner had been orally terminated which was illegal, arbitrary, discriminatory, unconstitutional violation of Article 14, 16 and 21 of the Constitution of India. It is alleged that while terminating the services of petitioner, respondent did not follow the provision envisaged under Section 25-F of the Industrial Disputes Act, 1947 although petitioner had completed 240 days in calendar year and was covered under the definition of continuous service envisaged under Section 25-B (2) (a) (ii) of the Industrial Disputes Act. It is alleged that even the reason for termination was not intimated to petitioner. The petitioner claims to have made several

requests/representations to respondent before the officials/authorities who took note of the prior period of service who confirmed about his working from the officials of the electric sub division and division where petitioner has discharged his duties. Thus, alleging to have violated principle of "Last go First come", petitioner claimed that despite continuous service he was retrenched without giving notice as required under Section 25-N of the Industrial Disputes Act and thus the respondent/board were liable to be punished under Section 25-O of the Industrial Disputes Act. The grievance of petitioner remains that after his illegal termination he filed a demand notice before Labour-cum-Conciliation Officer on 25-6-2013 but the said authority failed and failure report was sent to the Labour Commissioner. Thereafter, Labour Commissioner *vide* order dated February, 2014 refuse to make reference to the present tribunal whereupon the petitioner had moved to the Hon'ble High Court of H.P. and got order of the Labour Commissioner quashed with direction to the Labour Commissioner to make reference to Labour Court under Section 12 (4) of the Industrial Disputes Act. It is alleged that petitioner has remained unemployed due to respondent's illegal order who was not gainfully employed anywhere from the date of illegal termination of petitioner and thus entitled for wages of back period. Accordingly, petitioner has prayed for setting aside the illegal termination order *w.e.f.* 30th May, 2001 with direction to the respondent/board to reinstate the petitioner with full back wages and seniority, continuity in service with all consequential benefits and with direction to respondent to grant work-charge status to the petitioner and litigation costs of Rs.1,50,000/- and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objection of maintainability, no cause of action, estoppel, no *locus standi*, bad for non-joinder of necessary party. On merits, admitted that petitioner Piar Chand had worked on muster roll from July, 1998 till 30-5-2001 intermittently at electrical sub division HPSEB Baijnath and Paprola under electrical Division Baijnath. It is alleged that petitioner had never completed 240 days consecutively in any calendar year and was thus not covered under the definition of continuous service within the meaning of Section 25-B (2) (a) (ii) of the Industrial Disputes Act as claimed by the claimant/petitioner. Denying to have been violated any provisions and Rules of the Industrial Disputes Act, respondent claims to have not committed any offence as alleged by the petitioner. It has been emphatically denied that petitioner was illegally disengaged in utter violation of mandatory provisions of Sections 25-G and 25-H of the Industrial Disputes Act. It is contended that since the petitioner had not fulfilled the terms and conditions as per law in the matter so the question of the benefits as claimed by the petitioner did not arise. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B mandays chart of petitioner, Ex. PW1/C copy of demand notice, Ex. PW1/D copy of order of Hon'ble High Court dated February, 2014, copy of order of the Hon'ble High Court dated 30-12-2014 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Raman Kumar, the then Sr. Executive Engineer, HPSEBL, Baijnath had stated on oath that Shri Piar Chand s/o Prakash Chand had worked regularly on muster roll basis from July 1998 to 30-5-2001 but the petitioner had not completed 240 days. He further stated that respondent had never terminated the service of petitioner but he had left the job and closed evidence.

7. It is also pertinent to mention here that in pursuance to closure of evidence by the petitioner, an application for additional evidence under Rule 15 of the Industrial Disputes (Central) Rules, 1957 had been moved *vide* which award dated 16-12-2015 passed by this court was affirmed by the Hon'ble High Court of Himachal Pradesh in CWP no. 1146/2016-E *vide* decision dated 2-3-2017 in case titled as Executive Engineer vs. Suresh Kumar *vide* statement dated 22-2-2106

Shri Raman Chaudhary, Executive Engineer, HPSEBL Baijnath, there is no objection in allowing the application besides stated that no seniority list of daily wagers had been prepared by respondent/department in particular concerning the present case. After allowing the application, Ex. PW1/F order dated 4-12-2017 and order dated 24-11-2017 Ex. PW1/G passed by Hon'ble High Court of H.P. has been tendered but Ld. Counsel for respondent did not lead any evidence on behalf of respondent to the additional evidence as led by the petitioner.

8. I have heard the counsel representing petitioner and Ld. Counsel for respondent, gone through records of the case carefully.

9. From the contentions raised, following issues were framed on 17-4-2017 for determination:—

- (1) Whether termination of services of the claimant/petitioner by the respondent *w.e.f.* 31-12-2001 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (5) Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? .. *OPR.*
- (6) Whether the petitioner has no *locus standi* to file the case as alleged? ..*OPR.*
- (7) Whether the petition is bad for non-joinder/mis-joinder of the necessary parties as alleged? ..*OPR.*

Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	No
Issue No. 5 :	Unpressed.
Issue No. 6 :	No
Issue No. 7 :	Unpressed
Relief :	Claim petition is allowed in part per operative part of the Award.

#### REASONS FOR FINDINGS

#### ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.



12. At the outset, it is apt to mention here that as per mandays chart Ex. PW1/B petitioner is shown to have worked 246 days *w.e.f.* 21st July, 1998 to 30th May, 2001. It is also evident from this document that immediately preceding his termination, petitioner had merely worked for 92 days in the year 1999 and 88 days in 1998 meaning thereby that before termination requirement of Section 25-F of Industrial Disputes Act was not meted out which required petitioner to have worked for 240 days. Although in affidavit of petitioner has maintained that he had worked for 240 days but factually on the basis of documentary evidence relied upon by the petitioner which has gone un-repudiated clearly establish that immediately preceding his termination petitioner had factually not worked for 240 days and as such respondent was not required to serve any notice envisaged under Section 25-F of the Industrial Disputes Act moreso when respondent has taken a specific plea that petitioner had abandoned the job. Be it stated that plea of abandonment taken by respondent has not been proved as no notice was served upon petitioner after abandoning the job calling upon him to resume duty. In any case petitioner was required to establish having worked for 240 days immediately preceding his termination irrespective of fact that respondent has failed to establish plea of abandonment on part of petitioner. Accordingly, it is held that respondent had not violated the provisions of Section 25-F of the Industrial Disputes Act as stated in foregoing paragraphs.

13. In so far as violation of Sections 25-G & 25-H of the Industrial Disputes Act are concerned, it is relevant to mention here that RW1 Shri Raman Kumar, Executive Engineer, HPSEBL Baijnath has stated on oath that petitioner worked with the respondent on muster roll from July, 1998 to 30-5-2001 in the Electrical Sub Division HPSEBL under Electric Division, Baijnath. He has also stated that respondent thereafter was getting the work done through contractor and that respondent had never disengaged petitioner who left the job of his own. In cross-examination, respondent has specifically admitted that four-five workers remained engaged along-with petitioner out of which one Suresh Kumar has been engaged in service and case of another workman namely Partap Chand was pending before the Hon'ble High Court of H.P. He has denied that any junior to petitioner had been engaged but shown his ignorance to tell if any one junior to petitioner had been engaged. Being the contesting respondent, RW1 was expected to depose correctly with regard to giving employment to any junior in service which could be determined only when a seniority list was prepared as was required to be maintained by respondent.

14. Ld. Counsel for the petitioner has contended that it was incumbent upon the respondent to have prepared seniority list of employees/beldars working under it and having failed to produce the said record as it was not as it was not prepared, adverse inference deserves to be drawn against the respondent's case. It is pertinent to mention here that RW1 Raman Kumar, Executive Engineer, HPSEBL Baijnath while not filing reply to application for additional evidence has made statement on 22-2-2018 before this court that no seniority list of daily wager had been prepared more specifically no seniority list in this case has been prepared. Thus, respondent is held to have not complied with requirement of provisions of Sections 25-G of the Industrial Disputes Act as has been held by Hon'ble Apex Court in judgment reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act**. Thus, by not revealing true facts in cross-examination by RW1 if any junior to petitioner was engaged and at the same time, non production of seniority list clearly violates the provisions of Section 25-G of the Industrial Disputes Act for which an adverse inference has been drawn against respondent for withholding or suppressing true facts qua engaging juniors to petitioner and termination of petitioner as claimed by him. In view of judgment 2015 (*supra*) and another judgment titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** relied upon by petitioner in which has similar controversy was involved and respondent/department having retained junior workers and to disprove the same, it was held that it was necessary for the respondent to have brought on record

seniority list. That being so, applying the ratio of judgment, respondent having not prepared any seniority list has violated Section 25-G of the Industrial Disputes Act.

15. As far as violation of provisions of Section 25-H is concerned while terminating service of petitioner, no notice for re-employment was given to him although respondent RW1 has shown ignorance about retaining any junior workmen and retrenching the petitioner. Ld. Counsel for petitioner has taken through Ex. PW1/G copy of order dated 2-3-2017 of the Hon'ble High Court of H.P. passed in CWP No.1146/2016 titled as Executive Engineer vs. Suresh Kumar in which Hon'ble High Court of H.P. has affirmed Award dated 16-12-2015 of this Court in which similar controversy was involved and the petitioner who was writ petitioner before Hon'ble High Court of H.P. had been engaged by respondent *i.e.* HPSEB as in this in service in pursuance to the said award. Similarly, in CWP No.264/2017 *vide* order dated 24-11-2017 Ex. PW1/F Writ Petition filed by HPSEB against Pratap Chand was dismissed directing HPSEB to give same benefits as given to respondent/workman in CPW No.1146/2016-E as stated above. Be it stated that these two workmen who were disengaged like petitioner worked with HPSEB Baijnath and were engaged as directed by this court while passing award. Thus, out of five employees as revealed by RW1 in cross-examination, two have been engaged by the respondent/department. Now in this case petitioner has proved Ex. PW1/B the mandays chart, Ex. PW1/C demand notice, Ex. PW1/D order dated 5-12-2015 of Labour Commissioner, Ex. PW1/E order dated 30-12-2014 of Hon'ble High Court of H.P. passed in CWP No.9467/2014. On the basis of these documents, it has been contended that all the above procedure was resorted by the petitioner by raising demand notice as referred to above in pursuance to which matter was referred by Labour Commissioner and thereafter to this court. Since respondent has violated Sections 25-G and 25-H of the Industrial Disputes Act as stated above, this court is left with no option but to hold that petitioner would be entitled to relief of reinstatement with seniority and continuity in service **except back wages** from the **date of demand notice dated 25-6-2013 Ex. PW1/C** on record. Issues in hand are decided in favour of petitioner and against the respondent.

### ISSUE NO. 3

16. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. That being so when petitioner/claimant was removed from service which is to be adjudicated by this Court, the court is left with no option but hold that present claim petition is maintainable. Issue in question is answered in negative in favour of petitioner and against the respondent.

### ISSUE NO. 4

17. In view of the findings on the above issues petitioner has cause of action, *moreso* when he had claimed his termination from service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

### ISSUES NO. 5 & 7

18. These issues were not pressed by Ld. Counsel for the respondent, as such the issues are decided as unpressed against the respondent and in favour of petitioner. Resultantly, issues in question are answered in negative.

### ISSUE NO. 6

19. Ld. Counsel for the respondent has raised the objection on the *locus standi* of the petitioner to sue but as the petitioner was employee of respondent whose services had been

allegedly illegally terminated, he could certainly challenge the action of the respondent/board which was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner had no *locus standi* to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

## RELIEF

20. As sequel to my findings on foregoing issues, the termination order of petitioner is quashed and set aside and the respondent is hereby directed to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from date of demand notice dated 25-6-2013 Ex. PW1/C **except back wages**. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2018.

Sd/-

(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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## IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 497/2016  
Date of Institution : 20-08-2016  
Date of Decision : 28-02-2018

Shri Nanak Chand s/o Late Shri Ghopla Ram, r/o Village and Post Office Bir, Tehsil Baijnath, District Kangra, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, Electrical Division, HPSEB Ltd. Baijnath, District Kangra, H.P. *..Respondent.*

## Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pradeep Dogra, Adv.  
For the Respondent : Sh. Kapil Singh Mandyal, Adv.

## AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Nanak Chand s/o Late Shri Ghopla Ram, r/o Village and Post Office Bir, Tehsil Baijnath, District, Kangra, H.P. w.e.f. 27-11-1999 by the Executive Engineer, Electrical Division, HPSEB Limited, Baijnath, District Kangra, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after about 13 years *vide* demand notice dated 25-06-2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that claimant/petitioner was appointed as daily paid worker in July, 1998 at Electrical Division Baijnath where he worked upto 26-11-1999 on muster roll however, service of petitioner is alleged to be illegally terminated by the respondent in the month of November, 1999 without any rhyme and reason with object to victimize the petitioner on the pretext that works and funds were not available with the respondent. It is alleged that respondent had engaged number of fresh persons from time to time. It is alleged that service of petitioner had been orally terminated which was illegal, arbitrary, discriminatory, unconstitutional violation of Article 14, 16 and 21 of the Constitution of India. It is alleged that while terminating the services of petitioner, respondent did not follow the provision envisaged under Section 25-F of the Industrial Disputes Act, 1947 although petitioner had completed 240 days in calendar year and was covered under the definition of continuous service envisaged under Section 25-B (2) (a) (ii) of the Industrial Disputes Act. It is alleged that even the reason for termination was not intimated to petitioner. The petitioner claims to have made several requests/ representations to respondent before the officials/authorities who took note of the prior period of service who confirmed about his working from the officials of the electric sub division and division where petitioner has discharged his duties. Thus, alleging to have violated principle of “Last go First come”, petitioner claimed that despite continuous service he was retrenched without giving notice as required under Section 25-N of the Industrial Disputes Act and thus the respondent/board were liable to be punished under Section 25-O of the Industrial Disputes Act. The grievance of petitioner remains that after his illegal termination he filed a demand notice before Labour-cum-Conciliation Officer on 25.6.2013 but the said authority failed and failure report was sent to the Labour Commissioner. Thereafter, Labour Commissioner *vide* order dated February, 2014 refuse to make reference to the present tribunal whereupon the petitioner had moved to the Hon<sup>ble</sup> High Court of H.P. and got order of the Labour Commissioner quashed with direction to the Labour Commissioner to make reference to Labour Court under Section 12 (4) of the Industrial Disputes Act. It is alleged that petitioner has remained unemployed due to respondent's illegal order who was not gainfully employed anywhere from the date of illegal termination of petitioner and thus entitled for wages of back period. Accordingly, petitioner has prayed for setting aside the illegal termination order w.e.f. 26.11.1999 with direction to the respondent/board to reinstate the petitioner with full back wages and seniority, continuity in service with all consequential benefits with direction to respondent to grant work-charge status to the petitioner and litigation costs of Rs.1,50,000/- and to any other relief petitioner is found entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objection of maintainability, no cause of action, estoppel, no locus standi, bad for non-joinder of necessary party. On merits, admitted that petitioner Piar Chand had worked on muster roll from July, 1998 till 26.11.1999 intermittently at electrical sub division HPSEB Baijnath and Paprola under electrical Division Baijnath. It is alleged that petitioner had never completed 240 days

consecutively in any calendar year and was thus not covered under the definition of continuous service within the meaning of Section 25-B (2) (a) (ii) of the Industrial Disputes Act as claimed by the claimant/petitioner. Denying to have been violated any provisions and Rules of the Industrial Disputes Act, respondent claims to have not committed any offence as alleged by the petitioner. It has been emphatically denied that petitioner was illegally disengaged in utter violation of mandatory provisions of Sections 25-G and 25-H of the Industrial Disputes Act. It is contended that since the petitioner had not fulfilled the terms and conditions as per law in the matter so the question of the benefits as claimed by the petitioner did not arise. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B mandays chart of petitioner, Ex. PW1/C copy of demand notice, Ex. PW1/D copy of order of Hon'ble High Court dated February, 2014, copy of order of the Hon'ble High Court dated 30.12.2014 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Raman Kumar, the then Sr. Executive Engineer, HPSEBL, Baijnath had stated on oath that Shri Nanak Chand s/o Sh. Ghopla Ram had worked regularly on muster roll basis from July 1998 to 26.11.1999 but the petitioner had not completed 240 days. He further stated that respondent had never terminated the service of petitioner but he had left the job and closed evidence.

7. It is also pertinent to mention here that in pursuance to closure of evidence by the petitioner, an application for additional evidence under Rule 15 of the Industrial Disputes (Central) Rules, 1957 had been moved *vide* which award dated 16-12-2015 passed by this court was affirmed by the Hon'ble High Court of Himachal Pradesh in CWP No.1146/2016-E *vide* decision dated 2-3-2017 in case titled as Executive Engineer vs. Suresh Kumar *vide* statement dated 22-2-2016 Shri Raman Chaudhary, Executive Engineer, HPSEBL Baijnath, there is no objection in allowing the application besides stated that no seniority list of daily wagers had been prepared by respondent/department in particular concerning the present case. After allowing the application, Ex. PW1/F order dated 4-12-2017 and order dated 24-11-2017 Ex. PW1/G passed by Hon'ble High Court of H.P. has been tendered but Ld. Counsel for respondent did not lead any evidence on behalf of respondent to the additional evidence as led by the petitioner.

8. I have heard the counsel representing petitioner and Ld. Counsel for respondent, gone through records of the case carefully.

9. From the contentions raised, following issues were framed on 17.4.2017 for determination:—

- (1) Whether termination of services of the claimant/petitioner by the respondent *w.e.f.* 27-11-1999 is/was illegal and unjustified as alleged? *OPP.*
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? *OPP.*
- (3) Whether the claim petition is not maintainable in the present form? *OPR.*
- (4) Whether the petitioner has no cause of action to file the present case as alleged *OPR.*
- (5) Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? *OPR.*

- (6) Whether the petitioner has no *locus standi* to file the case as alleged? OPR.
- (7) Whether the petition is bad for non-joinder/mis-joinder of the necessary parties as alleged? OPR.

Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 :	Yes
Issue No.2 :	Discussed
Issue No.3 :	No
Issue No.4 :	No
Issue No.5 :	Unpressed.
Issue No.6 :	No
Issue No.7 :	Unpressed
Relief. :	Claim petition is allowed in part per operative part of the Award.

#### REASONS FOR FINDINGS

##### ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that as per mandays chart Ex. PW1/B petitioner is shown to have worked 179 days *w.e.f.* 21st July, 1998 to 26<sup>th</sup> November, 1999. It is also evident from this document that immediately preceding his termination, petitioner had merely worked for 98 days in the year 1999 and 81 days in 1998 meaning thereby that before termination requirement of Section 25-F of Industrial Disputes Act was not meted out which required petitioner to have worked for 240 days. Although in affidavit of petitioner has maintained that he had worked for 240 days but factually on the basis of documentary evidence relied upon by the petitioner which has gone un-repudiated clearly establish that immediately preceding his termination petitioner had factually not worked for 240 days and as such respondent was not required to serve any notice envisaged under Section 25-F of the Industrial Disputes Act moreso when respondent has taken a specific plea that petitioner had abandoned the job. Be it stated that plea of abandonment taken by respondent has not been proved as no notice was served upon petitioner after abandoning the job calling upon him to resume duty. In any case petitioner was required to establish having worked for 240 days immediately preceding his termination irrespective of fact that respondent has failed to establish plea of abandonment on part of petitioner. Accordingly, it is held that respondent had not violated the provisions of Section 25-F of the Industrial Disputes Act as stated in foregoing paragraphs.

13. In so far as violation of Sections 25-G & 25-H of the Industrial Disputes Act are concerned, it is relevant to mention here that RW1 Shri Raman Kumar, Executive Engineer, HPSEBL Baijnath has stated on oath that petitioner worked with the respondent on muster roll from July, 1998 to 26.11.1999 in the Electrical Sub Division HPSEBL under Electric Division, Baijnath. He has also stated that respondent thereafter was getting the work done through contractor and that respondent had never disengaged petitioner who left the job of his own. In cross-examination, respondent has specifically admitted that four-five workers remained engaged along-with petitioner out of which one Suresh Kumar has been engaged in service and case of another workman namely Partap Chand was pending before the Hon'ble High Court of H.P. He has

denied that any junior to petitioner had been engaged but shown his ignorance to tell if any one junior to petitioner had been engaged. Being the contesting respondent, RW1 was expected to depose correctly with regard to giving employment to any junior in service which could be determined only when a seniority list was prepared as was required to be maintained by respondent.

14. Ld. counsel for the petitioner has contended that it was incumbent upon the respondent to have prepared seniority list of employees/beldars working under it and having failed to produce the said record as it was not as it was not prepared, adverse inference deserves to be drawn against the respondent's case. It is pertinent to mention here that RW1 Raman Kumar, Executive Engineer, HPSEBL Baijnath while not filing reply to application for additional evidence has made statement on 22-2-2018 before this court that no seniority list of daily wager had been prepared more specifically no seniority list in this case has been prepared. Thus, respondent is held to have not complied with requirement of provisions of Sections 25-G of the Industrial Disputes Act as has been held by Hon'ble Apex Court in judgment reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act**. Thus, by not revealing true facts in cross-examination by RW1 if any junior to petitioner was engaged and at the same time, non production of seniority list clearly violates the provisions of Section 25-G of the Industrial Disputes Act for which an adverse inference has been drawn against respondent for withholding or suppressing true facts *qua* engaging juniors to petitioner and termination of petitioner as claimed by him. In view of judgment 2015 (*supra*) and another judgment titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** relied upon by petitioner in which has similar controversy was involved and respondent/department having retained junior workers and to disprove the same, it was held that it was necessary for the respondent to have brought on record seniority list. That being so, applying the ratio of judgment, respondent having not prepared any seniority list has violated Section 25-G of the Industrial Disputes Act.

15. As far as violation of provisions of Section 25-H is concerned while terminating service of petitioner, no notice for reemployment was given to him although respondent RW1 has shown ignorance about retaining any junior workmen and retrenching the petitioner. Ld. counsel for petitioner has taken through Ex. PW1/G copy of order dated 2-3-2017 of the Hon'ble High Court of H.P. passed in CWP No.1146/2016 titled as Executive Engineer vs. Suresh Kumar in which Hon'ble High Court of H.P. has affirmed Award dated 16-12-2015 of this Court in which similar controversy was involved and the petitioner who was writ petitioner before Hon'ble High Court of H.P. had been engaged by respondent *i.e.* HPSEB as in this in service in pursuance to the said award. Similarly, in CWP No.264/2017 *vide* order dated 24-11-2017 Ex. PW1/F Writ Petition filed by HPSEB against Pratap Chand was dismissed directing HPSEB to give same benefits as given to respondent/workman in CWP No.1146/2016-E as stated above. Be it stated that these two workmen who were disengaged like petitioner worked with HPSEB Baijnath and were engaged as directed by this court while passing award. Thus, out of five employees as revealed by RW1 in cross-examination, two have been engaged by the respondent/department. Now in this case petitioner has proved Ex. PW1/B the mandays chart, Ex. PW1/C demand notice, Ex. PW1/D order dated 5-12-2015 of Labour Commissioner, Ex. PW1/E order dated 30.12.2014 of Hon'ble High Court of H.P. passed in CWP No.9467/2014. On the basis of these documents, it has been contended that all the above procedure was resorted by the petitioner by raising demand notice as referred to above in pursuance to which matter was referred by Labour Commissioner and thereafter to this court. Since respondent has violated Sections 25-G and 25-H of the Industrial Disputes Act as stated above, this court is left with no option but to hold that petitioner would be entitled to relief of reinstatement with seniority and continuity in service **except back wages** from the **date of demand notice dated 25-6-2013 Ex. PW1/C** on record. Issues in hand are decided in favour of petitioner and against the respondent.

**ISSUE NO. 3:**

16. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. That being so when petitioner/claimant was removed from service which is to be adjudicated by this Court, the court is left with no option but hold that present claim petition is maintainable. Issue in question is answered in negative in favour of petitioner and against the respondent.

**ISSUE NO. 4**

17. In view of the findings on the above issues petitioner has cause of action, moreso when he had claimed his termination from service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

**ISSUES NO. 5 & 7**

18. These issues were not pressed by Ld. Counsel for the respondent, as such the issues are decided as unpressed against the respondent and in favour of petitioner. Resultantly, issues in question are answered in negative.

**ISSUE NO. 6**

19. Ld. Counsel for the respondent has raised the objection on the *locus standi* of the petitioner to sue but as the petitioner was employee of respondent whose services had been allegedly illegally terminated, he could certainly challenge the action of the respondent/board which was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner had no *locus standi* to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

**RELIEF:**

20. As sequel to my findings on foregoing issues, the termination order of petitioner is quashed and set aside and the respondent is hereby directed to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from date of demand notice dated 25-6-2013 Ex. PW1/C **except back wages**. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room. Announced in the open Court today this 28th day of February, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 42/2017  
Date of Institution : 20-01-2017  
Date of Decision : 28-2-2018

Shri Madan Lal s/o Shri Kehar Singh, r/o Village & P.O. Dharehad, Tehsil Baijnath, District Kangra, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, Electrical Division, H.P.S.E.B. Ltd. Baijnath, District Kangra, H.P. *..Respondent.*

**Reference/Direct Claim Petition under Section 10 of the Industrial Disputes Act, 1947.**

For the Petitioner : Sh. Pardeep Dogra, Adv.  
For the Respondent : Sh. Kapil Singh Mandyal, Adv.

**AWARD**

This is a direct claim petition preferred under Section 2 (a) of the Industrial Disputes Act, 1947, as amended upto date ("hereinafter called the Act" for brevity) which was accompanied with claim petition under Section 10 of Industrial Disputes Act and the same was allowed *vide* order dated 20.01.2017 of this court.

2. Averments made in the claim petition reveal that petitioner was appointed as daily wager on muster roll in the year 1997 by the Assistant Engineer, HPSEB Electrical Sub Division Paprola who uninterruptedly worked from 1997 to November, 1999 was transferred to Electrical Sub Division Baijnath where petitioner had worked upto June, 2000 and discharged his duties satisfactorily when he was illegally terminated by the respondent without any reason and even while terminating service of petitioner, respondent did not follow the provisions envisaged under Section 25-F of the Industrial Disputes Act, 1947 despite the fact petitioner had completed 240 days in calendar year preceding his termination and was covered under the definition of "continuous service" envisaged under Section 25-B (2) (a) (ii) of the Industrial Disputes Act. It is alleged that even the reason for termination was not at all intimated. The petitioner claims to have made several representations to the respondent *i.e.* before the officials as well as authorities who taking into consideration past service and confirming the same from officials of the electrical sub division and division where petitioner had discharged his duties and after being satisfied with work of the petitioner, respondent/board reinstated the petitioner on service in the year 2001 who was asked to work at electric sub division Baijnath where he continue to work till 2004 when respondent/board directed petitioner not to come on job without any reason who was asked to work under various contractors who were executing various electrical works for respondent/board and in 2005, petitioner was asked to work with Satish Kumar, contractor who had been working for the respondent/board at 25KV station, 11KV HT Line, 3 Phase LT Line and single Phase LT Line and also provided BPL connections to the consumers while working along-with other regularly appointed workers namely Vijay Kumar, Puran Chand, Des Raj and Jitender who were appointed with the petitioner and had been retained by the respondent and petitioner was asked to work under contractor. Even some juniors had been retained by the respondent/board. Thus, alleging to have violated principle of "Last go First come", petitioner was retrenched without giving notice as required under Section 25-N of the Industrial Disputes Act who was liable to be punished under

Section 25-O of the Industrial Disputes Act. It is alleged that petitioner has remained unemployed due to respondent's illegal order and not gainfully employed anywhere from the date of illegal termination of petitioner and was entitled for wages of back period. Accordingly, petitioner has prayed for setting aside the illegal termination order *w.e.f.* 20th November, 1999 with direction to the respondent/board to reinstate the petitioner with full back wages and seniority, continuity in service with all consequential benefits and also direct respondent to grant work-charge status to the petitioner after completion of 10 years continuous service *w.e.f.* 1999 and 2004 and litigation costs of Rs. 1,50,000/- and any other relief petitioner is found entitled.

3. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objection of maintainability, no cause of action, estoppel, no *locus standi*, bad for non-joinder of necessary party. On merits admitted that petitioner Madan Lal had worked on muster roll from 1997 to November, 1999 intermittently at electrical sub division HPSEB Baijnath and Paprola under electrical Division Baijnath. It is alleged that petitioner had never completed 240 days in any calendar year who was not covered under the definition of "continuous service" within the meaning of Section 25-B (2) (a) (ii) of the Industrial Disputes Act as claimed by the claimant/petitioner. Denying to have violated any provisions and Rules of the Industrial Disputes Act, respondent claims to have not committed any offence as alleged by the petitioner. It has been emphatically denied that petitioner was illegally disengaged in utter violation of mandatory provisions of Sections 25-G and 25-H of the Industrial Disputes Act. It is contended that since the petitioner had not fulfilled the terms and conditions as per law in the matter so the question of the benefits as claimed by the petitioner did not arise. Accordingly, petition was sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copies of postal receipts Ex PW1/B, Ex. PW1C, Ex. PW1/D, copy of demand notice Ex. PW1/E, copy of registered envelop Ex. PW1/F, copy of muster roll Ex. PW1/G, copy of order dated 16-12-2015 Ex. PW1/H and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Raman Kumar, the then Executive Engineer, HPSEBL, Baijnath, tendered/proved his affidavit under Order 18 Rule 4 CPC and closed evidence.

6. It is pertinent to mention here that in pursuance to closure of evidence by the petitioner, an application for additional evidence under Rule 15 of the Industrial Disputes (Central) Rules, 1957 had been moved by petitioner *vide* which awards passed by this court in Executive Engineer *vs.* Suresh Kumar and Executive Engineer *vs.* Partap Chand were affirmed by the Hon'ble High Court of Himachal Pradesh. *Vide* statement dated 22-2-2106 Shri Raman Chaudhary, Executive Engineer, HPSEBL Baijnath has categorically deposed on oath that he has no objection in allowing the application for additional evidence besides stated that no seniority list of daily wagers had been prepared by respondent/department in particular concerning the present case. After allowing the application, Ex. PW1/K order dated 24-11-2017 and Ex. PW1/L dated 2-3-2017 passed by Hon'ble High Court of H.P. had been tendered closing additional evidence however respondent did not lead any evidence on behalf of respondent to the additional evidence adduced by the petitioner.

7. I have heard the Ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 17-4-2017 for determination:—

- (1) Whether time to time termination of services of the claimant/petitioner by the respondent during June, 2000 and finally in 2004 is/was illegal and unjustified as alleged? *OPP.*
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? *OPP.*
- (3) Whether the claim petition is not maintainable in the present form? *OPR.*
- (4) Whether the petitioner has no cause of action to file the present case as alleged? *OPR.*
- (5) Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? *OPR.*
- (6) Whether the petitioner has no *locus standi* to file the case as alleged? *OPR.*
- (7) Whether the petition is bad for non-joinder/mis-joinder of the necessary parties as alleged? *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	No
Issue No. 5 :	Unpressed
Issue No. 6 :	No
Issue No. 7 :	Unpressed

Relief : Claim petition is allowed in part per operative part of the Award.

#### REASONS FOR FINDINGS

#### ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner has although proved on record mandays chart Ex. PW1/I showing him to have worked for 136 days *w.e.f.* 1-12-1997 to 20-3-2000 but there is no corresponding evidence on record showing that petitioner was given any time to time break despite availability of funds and work. No list of workers who have been engaged and petitioner having been disengaged has been brought on record. As such, even if petitioner had proved on record the mandays chart showing him to have worked for 136 days but there is no reliable evidence showing that any other workmen had been engaged and petitioner was deliberately not given any work which could establish time to time break. In the witness box petitioner has not whispered even a single word that he was given break in service deliberately or say intermittent break as projected in this claim petition. As can be gathered from his affidavit of petitioner that he has merely alleged that he has worked continuously from 1997 to November,

1999 and thereafter till the year 2000 and that he was reengaged in 2001 and disengaged in 2004 and as such petitioner has worked for 240 days provided he could establish plea of time to time termination and thus respondent has violated Section 25-F of the Industrial Disputes Act. Suffice would be state here that in absence of allegation *qua* deliberate intermittent break given by respondent and there being no documentary evidence on record showing that any other workmen junior to him had been engaged during period for which break is stated to have been given deliberately has not been factually proved on record. As such, it would be unsafe to hold that petitioner had been given time to time break in service by respondent during service tenure deliberately by respondent prior to his termination in the year 2000 when he was allegedly asked to work with some contractor engaged by respondent. Since the mandays chart on record does not show that petitioner to have worked continuously period of 240 days in a calendar year preceding his date of termination, the respondent was not required to adhere to any procedure envisaged under Section 25-F of the Industrial Disputes Act by issuing any notice or paying wages in lieu thereof *moreso* when respondent has taken a specific plea that petitioner had abandoned the job. Be it stated that plea of abandonment taken by respondent has not been proved as no notice was served upon petitioner after abandoning job calling upon to resume duty. Moreover plea of abandonment had to be proved by respondent like any fact in issue. Accordingly, respondent is held to have not violated Section 25-F of the Industrial Disputes Act.

12. In so far as violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act are concerned, it would be relevant to mention here that respondent has deposed on oath on 12-10-2017 on record stating therein that petitioner had regularly worked with the respondent from 1997 to 1999 at Electrical Sub Division Paprola under Electric Division Baijnath and thereafter petitioner had been transferred to Electrical Division Baijnath who worked upto June, 2000. He has further stated that petitioner had also worked with the respondent/department from 2001 to 2004. but respondent/department had never terminated the service of petitioner rather petitioner had left the job of his own. It is pertinent to mention here that petitioner's affidavit Ex. PW1/A categorically stipulated that Vijay Kumar, Puran Chand, Desh Raj and Jitender working with the respondent however when RW1 confronted with this aspect he has shown his ignorance about Vijay Kumar, Puran Chand, Desh Raj and Jitender worked along-with the petitioner and that service of four workmen have been regularized. Even respondent RW1 despite being contesting respondent has shown his ignorance if person junior to petitioner were working with the department. Since RW1 is contesting respondent he was expected to disclose all material facts and by not deposing truthfully suppressing material fact as stated above, an adverse inference has been drawn against respondent. It is also pertinent to mention here that respondent/department has not prepared any seniority list which was required to be maintained under the law. RW1 Raman Chaudhary, Executive Engineer, HPSEBL Baijnath has made statement on oath before this court on 22-2-2018 in which he has categorically stated that no seniority list has been prepared by respondent in this case. No plausible explanation has been made for non preparation of the seniority list. Since respondent was responsible to maintain seniority list for which an adverse inference has been drawn. Thus, the claim of respondent that juniors to petitioner were not retained but the testimony of the petitioner shows that these four persons Vijay Kumar, Puran Chand, Desh Raj and Jitender were juniors to petitioner who were regularized whereas petitioner was retrenched from service by asking him to work with respondent clearly violated provisions of Section 25- G & 25-H of the Industrial Disputes Act in view of judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act**. It was reiterated by Hon'ble Supreme Court in another judgment **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765**. It is settled law that to prove violation of Section 25- G of Industrial Disputes Act, it is not necessary that the workman disengaged should have worked for 240 days and even lesser working days would attract Section 25-G provided it is established that

junior to petitioner has been retained whereas petitioner is retrenched. Ld. counsel for petitioner has also relied upon case titled as judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.** Ld. Counsel for the petitioner has also relied upon case titled as Executive Engineer Electrical Division H.P. Sub Division Baijnath, District Kangra, H.P. vs. Partap Chand (CWP no.264/2017) and another case titled as Executive Engineer vs. Suresh Kumar (CWP no.1146 of 2016-E) in which Hon'ble High Court of H.P. has dismissed aforesaid writ petitions vide order(s) dated 24-11-2017 & 2-3-2017 respectively affirming two separate awards of this court. It has been also contended that Ex.PW1/H award dated 16-12-2015 titled as Suresh Kumar vs. Executive Engineer has been affirmed in order dated 2-3-2017 referred to above which had similar facts and controversies besides being co-workmen with the present petitioner. As such, applying ratio of Suresh Kumar's case to this case, the petitioner is to be reinstated setting aside retrenchment order of respondent. Since it has come in the evidence that no seniority list had been prepared by respondent the omission so made clearly violated provisions of Section 25-G of the Industrial Disputes Act moreso when juniors were admittedly retained. In such like situation the plea of petitioner that he was not offered to be reengaged after termination while engaging above named four persons who have since been regularized and that there exist no seniority list, it is held that respondent had violated Section 25-H of the Industrial Disputes Act as after the year 2000, several workers as stated above were admittedly engaged but petitioner was not given offer of appointment which is mandatorily required under Section 25-H of Industrial Disputes Act. Accordingly, respondent is held to have violated Sections 25-H of Industrial Disputes Act as well.

13. As regards, petitioner being gainfully employed ever since he was illegally terminated as claimed, suffice would be to state here that cross-examination of petitioner clearly reveals that he had been working after termination or after disengagement from job by the respondent, as he had started working with one Santosh Kumar contractor. Similarly, RW1 too in cross-examination has admitted that petitioner was working with other contractors of electricity department. Thus, plea of petitioner having not remained engaged or gainfully employed get falsified from his own statement as well as statement of RW1 as stated above moreso when petitioner is technical person being electrician. RW1 Shri Raman Kumar, Executive Engineer, HPSEB had stated that petitioner had abandoned the job of his own. To prove abandonment of the job, the respondent was required to lead specific evidence and by simply stating that petitioner had abandoned the job was not sufficient to defeat the claim of petitioner and the respondent was mandatorily required to issue notice or initiate proceeding against the petitioner on his unauthenticated absence which has not been so done by the respondent as there is evidence adduced by respondent. As such, even when the petitioner has not succeeded in establishing his claim under Section 25-F of Industrial Disputes Act, yet he would be entitled for relief sought for within the ambit of Section 25-G as well as 25-H of the Industrial Disputes Act. In view of the foregoing discussions the termination of the services of claimant/petitioner by the respondent is held to be illegal and unjustified. Keeping in view peculiar facts and circumstances of case as stated above, petitioner besides being entitled to relief of being reinstated in service is also held entitled for seniority and consequential benefits **except back wages** from the date of demand notice dated 10-01-2016 Ex. PW1/E on record. Issues in hand are decided accordingly in favour of petitioner and against the respondent.

### ISSUE NO. 3

14. Ld. Counsel for the respondent has contended that present claim petition is not maintainable. On the other hand, Ld. Counsel for petitioner has emphasized that claim petition is maintainable as the claim was filed preceded by application under Section 2(a) of the Industrial Disputes Act which had been allowed vide order dated 20-1-2018. As such, when application for direct filing of claim petition had been allowed the claim of respondent that petition is not

maintainable under Section 10 of the Industrial Disputes Act, merits rejection. Accordingly, claim petition is held to be maintainable. This issue is answered in favour of petitioner and against the respondent.

#### ISSUE NO. 4

15. In view of the findings on the above issues petitioner has cause of action, moreso when he had claimed his termination from service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

#### ISSUES NO. 5 & 7

16. These issues were not pressed by Ld. Counsel for the respondent, as such the issues are decided as unpressed against the respondent and in favour of petitioner. Resultantly, issues in question are answered in negative.

#### ISSUE NO. 6

17. Ld. counsel for the respondent has raised the objection on the *locus standi* of the petitioner to sue but as the petitioner was employee of respondent whose services had been allegedly illegally terminated, he could certainly challenge the action of the respondent/board which was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner had no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

#### RELIEF

18. As sequel to my findings on foregoing issues, the termination order of petitioner is quashed and set aside and the respondent is hereby directed to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from date of demand notice *i.e.* 10-01-2016 **except back wages**. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The parties, however, shall bear their own costs.

19. The reference/direct claim petition under Section 10 of the Industrial Disputes Act, 1947 is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room. Announced in the open Court today this 28th day of February, 2018.

Sd/-

(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H. P.

**TRANSPORT DEPARTMENT****NOTIFICATION***Shimla-2, the 29<sup>th</sup> September, 2018*

**No.TPT-F(5)13/2018.**—In supersession of this department notification No. TPT-F(6)-6/2003 dated 30th September, 2013 and 5th October, 2013, the Governor, Himachal Pradesh in exercise of the powers conferred by sub-section (1) of Section-67 of the Motor Vehicles Act, 1988 (Act No. 59 of 1988) is pleased to issue following directions to the State Transport Authority, Himachal Pradesh, Shimla-04 and all Regional Transport Authorities in Himachal Pradesh regarding fixation of fare rates of stage carriage bus services in Himachal Pradesh.

**Directions :**

The State Transport Authority Himachal Pradesh and all Regional Transport Authorities in Himachal Pradesh shall ensure that the following rates of fares are fixed/charged for stage carriage bus services in the State of Himachal Pradesh in the public interest.

- I) Ordinary Bus Services Including Mini Buses  
(Fare per passenger per kilometre in paisa)
  - (i) Roads in Plains 112
  - (ii) Roads in Hills 175
- II) Deluxe Bus Service  
(Fare per passenger per kilometre in paisa)
  - (i) Roads in Plains 137
  - (ii) Roads in Hills 217
- III) AC/Volvo Bus Service  
(Fare per passenger per kilometre in paisa)
  - (i) Roads in Plains 274
  - (ii) Roads in Hills 362

2. The fares show above are maximum fares inclusive of all taxes. These directions will come into force with immediate effect.

**Note:—** The minimum fare shall be Rs.6/- for first 3 kilometres. The fraction of rupee *i.e.* 50 paise or above will be rounded off to next rupee and fraction of rupee below 50 paise shall be ignored.

By order,  
JAGDISH CHANDER SHARMA,  
*Principal Secretary (Transport).*

**ब अदालत जनाब सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, चढ़ियार,  
जिला कांगड़ा, हि0 प्र0**

मुकद्दमा संख्या 43/NT/2018

तिथि दायर 31-07-2018

श्रीमती मन्शा देवी पत्नी श्री बेली राम, निवासी गांव राजनगर, डाकघर सन्साई, उप-तहसील चढ़ियार,  
जिला कांगड़ा (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

श्रीमती मन्शा देवी पत्नी श्री बेली राम, निवासी गांव राजनगर, डाकघर सन्साई, उप-तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) ने इस कार्यालय/न्यायालय में प्रार्थना-पत्र पेश किया है कि मेरे पति का नाम आधार कार्ड, पैन कार्ड, बैंक पास बुक इत्यादि में सही नाम बेली राम दर्ज है परन्तु राजस्व अभिलेख महाल राजनगर में इन्तकाल तस्दीक करते समय मेरे पति का नाम बलू पुत्र लोभी दर्ज है जो कि गलत है। आवेदिका अपने पति का नाम राजस्व अभिलेख महाल राजनगर में सही नाम श्री बेली राम पुत्र स्व0 श्री लोभी, निवासी गांव राजनगर, उप-तहसील चढ़ियार, जिला कांगड़ा, हि0 प्र0 दर्ज करवाना चाहती है।

अतः आम जनता को इस राजपत्र इश्तहार के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी को कोई उजर व एतराज हो तो वह दिनांक 05-10-2018 को अधोहस्ताक्षरी की अदालत में असालतन या वकालतन हाजिर होकर अपना पक्ष रख सकते हैं। गैर-हाजिरी की सूरत में एक तरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 31-08-2018 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—

सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार,  
चढ़ियार, जिला कांगड़ा, हि0 प्र0।

**ब अदालत जनाब कार्यकारी दण्डाधिकारी एवं नायब तहसीलदार, चढ़ियार,  
जिला कांगड़ा, हि0 प्र0**

तिथि दायर 28-05-2018

श्रीमती शकुन्तला देवी पत्नी श्री भीम सिंह, निवासी गांव राजनगर, डाकघर सन्साई, उप-तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) प्रार्थिन।

बनाम

आम जनता

प्रत्यार्थी।

श्रीमती शकुन्तला देवी पत्नी श्री भीम सिंह, निवासी गांव राजनगर, डाकघर सन्साई, उप-तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) ने इस कार्यालय/न्यायालय में प्रार्थना-पत्र पेश किया है कि मेरी स्व0 सास



श्रीमत बांजा देवी की मृत्यु दिनांक 24-06-1995 को महाल राजनगर, पंचायत सन्साई में हुई है परन्तु उस समय पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका है। जिसकी पुष्टि हेतु स्थानीय पंचायत का अनापत्ति प्रमाण-पत्र संलग्न किया गया है। अब पंजीकरण करने के आदेश दिए जाएं।

अतः आम जनता को इस राजपत्र इश्तहार/मुश्रीमुनादी के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी को कोई उजर व एतराज हो तो वह दिनांक 05-10-2018 को अधोहस्ताक्षरी की अदालत में असालतन या वकालतन हाजिर होकर अपना पक्ष रख सकते हैं अन्यथा उपरोक्त मृत्यु का पंजीकरण करने के आदेश दे दिए जाएंगे। उसके उपरान्त कोई उजर व एतराज न सुना जाएगा।

आज दिनांक 31-08-2018 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—  
कार्यकारी दण्डाधिकारी एवं नायब तहसीलदार,  
चढ़ियार, जिला कांगड़ा, हि0 प्र0।

ब अदालत जनाब कार्यकारी दण्डाधिकारी एवं नायब तहसीलदार, चढ़ियार,  
जिला कांगड़ा, हि0 प्र0

तिथि दायर : 28-05-2018

श्रीमती शकुन्तला देवी पत्नी श्री भीम सिंह, निवासी गांव राजनगर, डाकघर सन्साई, उप-तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) प्राथिन।

बनाम

आम जनता

प्रत्यार्थी।

श्रीमती शकुन्तला देवी पत्नी श्री भीम सिंह, निवासी गांव राजनगर, डाकघर सन्साई, उप-तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) ने इस कार्यालय/न्यायालय में प्रार्थना-पत्र पेश किया है कि मेरे स्व0 ससुर श्री शुकुरु राम की मृत्यु दिनांक 22-06-1991 को महाल राजनगर, पंचायत सन्साई में हुई है परन्तु उस समय पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका है जिसकी पुष्टि हेतु स्थानीय पंचायत का अनापत्ति प्रमाण-पत्र संलग्न किया गया है। अब पंजीकरण करने के आदेश दिए जाएं।

अतः आम जनता को इस राजपत्र इश्तहार/मुश्रीमुनादी के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी को कोई उजर व एतराज हो तो वह दिनांक 05-10-2018 को अधोहस्ताक्षरी की अदालत में असालतन या वकालतन हाजिर होकर अपना पक्ष रख सकते हैं अन्यथा उपरोक्त मृत्यु का पंजीकरण करने के आदेश दे दिए जाएंगे। उसके उपरान्त कोई उजर व एतराज न सुना जाएगा।

आज दिनांक 31-08-2018 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—  
कार्यकारी दण्डाधिकारी एवं नायब तहसीलदार,  
चढ़ियार, जिला कांगड़ा, हि0 प्र0।

**Office of the Marriage Officer (S.D.M.), Nahan, District Sirmaur, Himachal Pradesh****PUBLIC NOTICE***Dated, the 19th September, 2018*

**No. Reader-SDM/Nahan/2018-2989.**—The following persons have submitted an application for solemnization of marriage under the Special Marriage Act, 1954. If any one has any objection on the grounds specified in the Act in respect of this solemnization of marriage, if he/she so wished may submit the objection by 18-10-2018.

**Name of Bridegroom :**

Sh. Abhisek Kumar Sharma (Bridegroom) (DOB 31-10-1989) s/o Sh. Gopal Dass, r/o Ward No. 3, Nagar Panchayat Baijnath, Tehsil Baijnath, District Kangra, H.P.

**Name of Bride :**

Tabassun Ansari (Bride) (DOB 24-07-1987) d/o Sh. Nazar Ali, r/o H. No. 173/4 Mohalla Haripur Nahan, District Sirmaur, H.P.

Seal.

VIVEK SHARMA (H.A.S.),  
*Addl. Registrar under Special Marriage Act-cum-  
Sub-Divisional Magistrate,  
Nahan, District Sirmaur, H. P.*